HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI C.V.NAGARJUNA REDDY

Writ Petition No.23000 of 2006

Between:

Syed Ale Hassan
and others.

… Petitioners

AND

Municipal Corporation of Hyderabad,
represented by its Commissioner,
Hyderabad and others.

… Respondents

:: O R D E R ::

Counsel for the petitioners : Shri M.Papa Reddy

08-11-2006

Per G.S.Singhvi, CJ

In this petition filed under Article 226 of the Constitution of India,

the petitioners have prayed for grant of a declaration that the inaction of respondent Nos.1 to 4 to take action against the illegal and unauthorized constructions being raised by respondent No.5 in an area of 63 square yards in Survey No.129/55, Banjara Hills, Shaikpet Village, Hyderabad, is illegal. They have further prayed for issue of a direction to respondent Nos.1 to 4 to demolish the illegal constructions.

We have heard Shri M.Papa Reddy, learned counsel for the petitioners and perused the record. In our opinion, the writ petition is liable to be dismissed summarily because –

i) The affidavit filed in support of the writ petition is not in consonance with Rule 5 of the Writ Proceedings Rules, 1977 framed by the High Court of Andhra Pradesh in exercise of its power under Article 225 of the Constitution of India. That rule is as under:

> "**5.** a) Every affidavit shall be drawn up in the first person and shall set forth succinctly and in chronological order all the relevant facts and the grounds for the relief sought. The statement of facts shall be divided into consecutively numbered paragraphs, each paragraph being confined as nearly as may be to a distinct portion of the subject.
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> b) The affidavit shall state—
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> i) the particular right conferred by the provisions of Part III of the Constitution sought to be enforced;
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> ii) the other purpose for which relief is sought;
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> iii) the particular law impugned and how it is not constitutionally valid and whether it is a State Law, Central Law or State and Central Law;
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> iv) whether any alternative remedy for the relief sought is provided for by or under any other law for the time being in force, and whether that remedy has been availed of and if so, with what result, by way of a separate paragraph;
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> v) whether the petitioner had or had not already filed a writ petition in the High Court or instituted any suit or

other legal proceedings in any Court of Law or Tribunal either for the same or substantially the same relief on a previous occasion and if he had done so, the particulars of the petition, suit or other proceedings and the result thereof shall also be mentioned in the affidavit, by way of a separate paragraph.

c) when the deponent speaks to facts within his knowledge he shall do so directly and positively using the words;

'I make oath (or affirm) and say ……

d) when a particular fact is not within the deponent's knowledge, but is stated upon information the deponent shall use the words I am informed by (giving the source of information) and verily believe it to be true and set out the grounds of his behalf.

e) Every affidavit stating any matter of opinion shall show the qualification of the deponent to express such opinion by referring to his length of experience, acquaintance with or other means of knowledge of the person or matter as to which the opinion is expressed.

f) A petition for a Writ of Habeas Corpus shall be accompanied by an affidavit by the person restrained setting out the nature and circumstances of the restraint:

Provided that where the person restrained is unable owing to the restraint to make the affidavit, the petition shall be accompanied by an affidavit made by some other person acquainted with the facts, which shall state the reason why the person restrained is unable to make the affidavit.

g) An application shall state the provisions of Law under which it is made and shall not contain more than one prayer unless the prayers are consequential."

A reading of clauses (c), (d) and (e) of Rule 5 reproduced above makes it clear that the person filing the affidavit must clearly state that the contents are true to his personal knowledge or information derived from the particular source and believed by him to be true.

If the contents of the affidavit are based on an opinion, then the qualification of the deponent to express such opinion by referring to his experience, acquaintance with or other means of knowledge should be indicated.

The verification of the affidavit filed in support of this petition reads as under:

"VERIFICATION

I, Dharmender Sharma, S/o.Sri Suraj Mal Sharma, aged 39 years, Occ:Business; R/o.3-5-141/2/B, Eden Garden, Hyderabad, do hereby declare that the contents of the above affidavit are true and correct to the best of my knowledge, belief and information and as such verified at Hyderabad on this the 1st day of November, 2006."

In our considered view, the above reproduced verification does not satisfy the requirement of Rule 5 and, therefore, the same cannot be made basis for entertaining the prayer made by the petitioner.

ii) The petitioners have not produced any tangible evidence before the Court to show that respondent No.5 has raised illegal constructions over their land.

With the above observations, the writ petition is dismissed. However, liberty is given to the petitioner to file fresh petition by giving the particulars of the so-called illegal construction.

As a sequel to dismissal of the writ petition, WPMP. No.29281 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

8.11.2006.

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